IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5046 OF 2000

Karantikari Suraksha Rakshak Sanghatana .. Petitioner

V/s

State of Maharashtra & Ors. .. Respondents

Mr.Sanjay Singhavi with Ms.Jane Cox and Ms.Tanu Mehta Tiwari for the petitioner.

Mr.A.A. Kumbhakoni, Associate Advocate General with Mr.P.M. Mokashi, A.G.P. and Mr.N.P. Deshpande, A.G.P. for Respondent No.1.

Mrs.Lata Desai for Respondent No.2.

Mr.R.D. Suvarna for Respondent No.3.

W I T H

WRIT PETITION NO. 5231 OF 1999

Maharashtra Rajya Suraksha Raksha & General Kamgar Union .. Petitioners

V/s

State of Maharashtra & Ors. .. Respondents

Mr.S.S. Pakale with Ms.Ranjana Todankar and Ms.Sonali for the Petitioners.

Mr.A.A. Kumbhakoni, Associate Advocate General with Mr.P.M. Mokashi, A.G.P. and Mr.N.P. Deshpande, A.G.P. for Respondents No.1 and 2.

Mrs.Lata Desai with Ms.Pallavi Divekar for Respondent No.3.

Mr.C.U. Singh for Respondent No.4.

Mr.R.D. Suvarna for Respondents No.6 to 26, 28, 29 and

31.

Mr.P.G. Karande for the Intervenors.

Mr.K.S. Bapat for the Intervenors.

WRIT PETITION NO.5040 OF 2000

Laxman Gopal Bhosale & Ors. .. Petitioners

V/s

State of Maharashtra & Ors. .. Respondents

Mr.Prakash Mahadik for the Petitioners (absent).

Mr.A.A. Kumbhakoni, Associate Advocate General with Mr.P.M. Mokashi, A.G.P. and Mr.N.P. Deshpande, A.G.P. for Respondents No.1 and 2.

Mrs.Lata Desai with Ms.Pallavi Divekar for Respondent No.3.

CORAM : H.L. GOKHALE &
J.H. BHATIA, JJ.

DATE OF RESERVING THE JUDGMENT : 7TH JULY 2006

DATE OF PRONOUNCING THE JUDGMENT: 10TH OCTOBER 2006

JUDGMENT: (Per H.L. Gokhale, J.)

1. These three Writ Petitions are filed by three different Trade Unions but all of them pray that the Maharashtra Private Security Guards (Regulation of Employment and Welfare) (Amendment) Act, 1996 be declared to be illegal and unconstitutional and be struck down.

2. The main submissions of the petitioners - Trade Unions to put in a nutshell are twofold. (i) The first submission is that under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) (Amendment) Act, 1981 ("the said Act" for short), as it stood prior to this amendment and as it was interpreted by the Courts, the agencies or the contractors were not permitted to provide the Security Guards and that the employment of the Security Guards who were not the direct employees of the factories or establishments, had to be provided only by the Board constituted under the said Act. It is their contention that this amending Act brings back and permits the agencies or the contractors to provide the Security Guards. The amendment is sought to be challenged as being a retrograde piece of legislation and violative of Articles 14 and 21 of the Constitution of India apart from being contrary to the directive principles contained in Articles 38, 39, 41, 42, 43 and 46 of the Constitution of India.

(ii). It is their further contention that the amending Act is repugnant to the provisions contained in the Contract Labour (Regulation and Abolition) Act, 1970. This Act is an earlier law made by the Parliament and it occupies the same field and since no assent of the President of India has been obtained to this amending Act, the same be declared as unconstitutional on the

touchstone of Article 254(2) of the Constitution of India.

3. Since the validity of this amending Act of the State is challenged, the State of Maharashtra is joined as the principal respondent to these three Petitions. The Security Guards Board constituted under Section 6 of the said Act is also joined as a respondent. Some of the contracting agencies and the principal employers are joined as additional respondents. The State Government has filed the Affidavits in reply to these Petitions. Submissions advanced on behalf of the petitioners, the State Government as well as the principal employers and the contracting agencies as also some of the interveners such as particular principal employers and contracting agencies have all been heard through their Counsel.

4. Before we examine the submissions of the various parties, we may advert to the salient features of the said Act. This Act known as "The Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981" was passed by the legislature of the State of Maharashtra, principally for regulating the employment of private Security Guards employed in factories and establishments in the State and for providing better terms and conditions of employment and welfare through the Board established for that purpose. That is the

declared object of this Act as per its preamble. This Board is constituted under Section 6 of this Act and is a body corporate. The State Government is supposed to prepare a scheme for ensuring regular employment of the Security Guards for the matters which have been mentioned in Section 3 of this Act. The Board is made responsible for administering the above scheme under Section 8 of this Act. The scheme gives detailed provisions with respect to the registration of the Security Guards and regulating their recruitment and registration of the Guards and the principal employers and about the maintenance of the registers etc. The concepts of agency, employer, principal employer and Security Guards are defined under the said Act. Under Sections 19, 20 and 21 of the said Act, certain responsibilities are cast on the principal employers under the Workmen’s Compensation Act, 1923, Payment of Wages Act, 1936 and the Maternity Benefits Act, 1961. Section 23 of the said Act provides for exemptions to the Security Guards employed by the agencies, if the Security Guards are on the whole receiving not less favourable benefits than those under the said Act or the scheme. The main controversy in these Petitions is with respect to the (a) amendments to the above-referred definitions and (b) to Sections 19, 20, 21 and 23 of the said Act, which are claimed to be retrograde amendments.

5.(i) Much prior to the passing of this State Act of 1981, the Contract Labour (Regulation and Abolition) Act, 1970 was passed by the Parliament. This Act has two main objectives viz. (i) to prohibit the employment of contract labour in certain situations and (ii) to regulate working conditions of the contract labour wherever such employment is not prohibited.

(ii). Thus, Section 10 of this Act provides that an appropriate Government may, after consultation with Central Board or the State Board, as the case may be, constituted under the Act, prohibit the employment of contract labour in any process, operation or other work in any establishment. Sub-section (2) of Section 10 lays down the relevant factors which are to be considered before issuing any such notification. It includes factors such as (a) as to whether the process or operation is incidental or necessary to the particular industry or establishment, (b) whether it is of a perennial nature, (c) whether it is done ordinarily through regular workmen in its establishment, (d) whether it is sufficient to employ a considerable number of whole time workmen.

(iii). Wherever there is no such prohibition of employment of contract labour, the contractor concerned has to obtain a licence under Section 12 of the said

Act. He has to abide by the welfare and health measures which include canteens, rest rooms, drinking water, urinals, first aid facilities, etc. as provided under Chapter-V of the said Act. If these amenities are not provided by the contractor, the liability gets transferred to the principal employer under Section 20 of the said Act and similarly in the case of non-payment or short payment of wages by the contract, the principal employer is made liable under Section 21(4) of the Act.

6. Thus, this Act was concerned with the welfare of labour including conditions of work which is item No.24 in the concurrent list (List-3) of the Seventh Schedule to the Constitution of India. When the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 was passed by the State Legislature, it sought to regulate the employment of private Security Guards employed in factories and establishments through the mechanism of the Security Guards Board. It also sought to make better provisions for their conditions and terms of employment and welfare. The Security Guards engaged on the contract basis are a species of contract labour and, therefore, since the field was occupied by the above Central Act to some extent after passing of this Act the assent of the President was obtained and that is how it came to be enforced from 24th September 1981. It is contended that the amending

Act reduces the rights of the Security Guards and, therefore, President's assent was once again required and in the absence thereof, the amending Act is unconstitutional under Article 254(2) of the Constitution of India.

7. The provisions of the unamended Act and its application came to be challenged earlier by a few Security Agencies. By a judgment rendered by a learned Single Judge (P.B. Sawant, J., as he then was in this Court), the Act was held to be a valid piece of legislation. The said judgment was delivered in the case of **M/s.Tradesvel Security Services Pvt. Ltd. vs. State of Maharashtra reported in LXXXIV 1982 BLR 608**. The contention of the petitioners is that under this judgment the Security Agencies could obtain an exemption by way of a one time exercise only when this Act came into force. According to them the exemption could be availed of only at the initial stage and not once the Act became applicable to the factory or to the establishment (as seen on pages 657 and 658 of the above-referred Law Report). It is their further contention that under the said judgment once this Act comes into application, there is no scope for exemption to the agencies. Besides, according to them, only the Security Guards can obtain the exemption but not the agencies. This position is stated to have been changed

by the amending Act. It is, therefore, that they are criticizing the amendments to the relevant definitions and the amendment to Section 23 of the said Act as retrograde amendments. They equally criticize the amendments to Sections 19, 20 and 21 of the said Act. To understand this submission, we will have a close look at the judgment of the learned Single Judge and the subsequent judgment of the Apex Court which is the other relevant judgment in this behalf viz. in the case of **Security Guards Board for Greater Bombay & Thana Distt. etc. vs. Security and Personnel Service Pvt. Ltd. & ors. reported in AIR 1987 SC 1370**. Before we do that, however, we may just note as to what were the provisions prior to amendment and what is the change brought about by the amendment.

8. The statement of objects and reasons of the amending Act states that the definitions and the provision of Section 23 of the Act were ambiguous and, therefore, the Government of Maharashtra has, with a view to leave no room for any doubt or ambiguity and to explicitly establish the co-relationship of the Security Guards with the agencies who directly employ them, decided to amend Section 23 and some of the sections of this Act. The relevant **definitions** prior to the amending Act read as follows:-

" 2(1) **"agency" or "agent"**, in relation to a Security Guard, means an individual or body of individuals or a body Corporate, who undertakes to execute any security work or watch and ward work for any factory or establishment by engaging such Security Guard on hire or otherwise, or who supplies such Security Guards either in groups or as an individual, and includes a sub-agency or a sub-agent."

" **2(3) "employer"**, in relation to a Security Guard engaged by or through an agency or agent, means the principal employer and in relation to any other Security Guard, the person who has ultimate control over the affairs of the factory or establishment and includes any other person to whom the affairs of such factory or establishment are entrusted, whether such person is called an Agent, Manager or by any other name prevailing in the factory or establishment."

" **2(8) "principal employer"** means an employer who has engaged Security Guards through an agency or agent."

" **2(10) "Security Guard" or "private Security** Guard" means a person who is engaged or is to be engaged through any agency or an agent, whether for wages or not, to do security work or watch

and ward work in any factory or establishment and, includes any person, not employed by any employer or agency or agent, but working with the permission of, or under an agreement with, the employer or agency or agent, but does not include the members of any employer's family or any person who is a direct and regular employee of the principal employer."

9. These definitions have been substituted by the amended definitions. They read as follows:-

"(1) **"agency or agent",** in relation to a Security Guard, means an individual or body of individuals or a body corporate, who or which employs Security Guards in his or its employment on wages and undertakes to execute any security work or watch and ward work on contract, for any factory or establishment by engaging the Security Guards in his or its employment, but does not include a sub-agency or sub-agent or the Board;"

"(3) **"employer"** in relation to a Security Guard in the direct employment of an agency or agent and deployed in a factory or establishment through such agency or agent, means such agency

or agent;"

"(8) **"principal employer"** in relation to any class or classes of Security Guards deployed in a factory or establishment by the agency or agent or Board, means the person who has ultimate control over the affairs of the factory or establishment and includes any other person to whom the affairs of such factory or establishment are entrusted whether such person is called Authorised Representative, Manager or by any other name prevailing in the factory or establishment;"

"(10) **"Security Guard" or "Private Security Guard"** means a person who is engaged through any agency or agent or Board to do security work or watch and ward work in any factory or establishment but does not include the members of any principal employer's family or any person who is a direct employee of the principal employer;"

10.(i). Prior to the amendment, Section 23 providing for exemptions read as follows:-

" **23. Exemptions -**

The State Government may, after consulting the Advisory Committee, by notification in the Official Gazette, and subject to such conditions and for such period as may be specified in the notification, exempt from the operation of all or any of the provisions of this Act or any Scheme made thereunder, all or any class or classes of Security Guards employed in any factory or establishment or in any class or classes of factories or establishments, if in the opinion of the State Government, all such Security Guards or such class or classes of Security Guards are in the enjoyment of benefits, which are on the whole not less favourable to such Security Guards than the benefits provided by or under this Act or any Scheme made thereunder.

Provided that before any such notification is issued, the State Government shall publish a notice of its intention to issue such notification, and invite objections and suggestions in respect thereto and no such notification shall be issued until the objections and suggestions have been considered and a period of one month has elapsed from the date of first publication of the notice in the

Official Gazette:

Provided further that, the State Government may, by notification in the Official Gazette, at any time, for reasons to be specified, rescind the aforesaid notification."

(ii). By the amending Act (a) after the word "employed", the words "by the agency or agent as may be specified in the notification and deployed" have come to be added; (b) the first proviso has come to be deleted and (c) in the second proviso the words "Provided further that" have been substituted by the words "Provided that".

(iii). Consequently now, Section 23 reads as follows:-

" **23. Exemptions.-** The State Government may, after consulting the Advisory Committee, by notification in the Official Gazette, and subject to such conditions and for such period as may be specified in the notification, exempt from the operation of all or any of the provisions of this Act or any Scheme made thereunder, all or any class or classes of Security Guards employed by the agency or agent as may be specified in the notification and

deployed in any factory or establishment or in any class or classes of factories or establishment, if in the opinion of the State Government, all such Security Guards or such class or classes of Security Guards are in the enjoyment of benefits, which are on the whole not less favourable to such Security Guards than the benefits provided by or under this Act or any Scheme made thereunder.

Provided that, the State Government may, by notification in the Official Gazette, at any time, for reasons to be specified, rescind the aforesaid notification."

11. As far as **Sections 19, 20 and 21 of the said Act** are concerned, it has come to be clarified that the principal employer shall be liable in certain circumstances. In these three sections, the word "employer" appearing on the second occasion in the body of section has come to be substituted by the word "principal employer". These three sections after the amendment read as follows:-

" **19. Application of Workmen's Compensation Act to Security Guards.-** The provisions of the Workmen's Compensation Act, 1923, and the rules

made thereunder, shall mutatis mutandis apply to the registered Security Guards employed in any factory or establishment; and for that purpose they shall be deemed to be workmen within the meaning of that Act; and in relation to such workmen, employer shall mean where a Board makes payment of wages to any such workmen, the Board, and in any other case, the 2[principal employer] as defined in this Act."

(2. These words were substituted for the word "employer" by Mah. Ord.4 of 1996 and subsequently by Mah. 28 of 1996, s.10.)

" **20. Application of Payment of Wages Act to Security Guards.-** (1) Notwithstanding anything contained in the Payment of Wages Act, 1936 (IV of 1936) (hereinafter referred to in this section as "the said Act"), the State Government may, by notification in the Official Gazette, direct that all or any of the provisions of the said Act and the rules made thereunder shall apply to all or any class of registered Security Guards employed in any factory or establishment, with the modification that in relation to registered Security Guards, employer shall mean, where a Board makes payment of wages to any such

Guards, the Board and in any other case, the 1[principal employer] as defined in this Act; and on such application of the provisions of the said Act, an Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of the enforcement of such provisions of the said Act within the local limits of his jurisdiction.

(2) The State Government may, only if the Advisory Committee so advises, by a like notification, cancel or vary any notification issued under sub-section (1).

(1. These words were substituted for the word "employers", ibid. s.11.)

" **21. Application of Maternity Benefit Act to Women Security Guards.-** Notwithstanding anything contained in the Maternity Benefit Act, 1961 (53 of 1961) (hereinafter referred to in this section "the said Act"), the State Government may, by notification in the Official Gazette, direct that all or any of the provisions of the said Act and the rules made thereunder shall apply to registered Women Security Guards employed in any factory or establishment; and

for that purpose, they shall be deemed to be women within the meaning of the said Act; and in relation to such women, employer shall mean, where a Board makes payment of wages to such women, the Board, and in any other case, 2[principal employer] as defined in this Act; and on such application of the provisions of the said Act, an Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of enforcement of such provisions of the said Act within the local limits of his jurisdiction."

(2. These words were substituted were substituted for the word "employer", by Mah.Ord. 4 of 1996 and subsequently by Mah.28 of 1996, s.12.)

12. Much reliance has been placed on the judgment in the case of **M/s. Tradesvel Security Services Pvt. Ltd. v. State of Maharashtra (supra)** which was decided on 2nd November 1982. The provisions of this Act of 1981 and the Scheme thereunder (as it then stood) came to be challenged by the employers and the agencies which supplied security guards on contract basis. Ten different grounds were raised on behalf of the Petitioners which can be seen on pages 644 and 645 of

the law report. These grounds included the alleged violation of Articles 14 and 19(1)(g), that there will be a total stoppage of business of the agencies, that there was no rational connection with the object sought to be attained, that it was an excessive provision and also that it was not permissible for the State to totally prohibit the activities of the agencies.

13. The learned Single Judge first referred to the circumstances in which the Act was passed. He noted that some 250 agencies were operating earlier in Greater Bombay and Thane Districts prior to the State Government promulgating the Ordinance on 28th June 1981 leading to the passing of this Act of 1981 subsequently. The learned Judge noted that the contract labour system was operating in various factories and establishments, and the Guards concerned were not being given the correct wages, that their working conditions were unsatisfactory and that there was an overall exploitation of the widespread unemployment in the society. The learned Judge noted that the demand for the abolition of the contract labour system had led to the enactment of the Central Act called the Contract Labour (Regulation and Abolition) Act, 1970. That Act applied to those establishments in which 20 or more workmen were employed, and that it also made provisions for the welfare and health of contract labour and required the

contractors to make available various facilities to the contract labour. Certain responsibilities were placed on the principal employer particularly with respect to payment of wages in case they were not paid by the contractors. The learned Judge also noted that the State of Maharashtra had passed the Maharashtra Mathadi and Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969. That Act had come into force on 13th June 1969. A representation was made to the Government by the Trade Union of the security guards to constitute a Board on the lines of the Mathadi Board. The learned Judge noted that a rapid sample survey had been conducted by the State Government and a report was made that a notification could be issued under the Mathadi Act.

14. The learned Judge noted that thereafter, however, the State Government proceeded to pass the present Act prior to which an Ordinance was issued. It was noted that the preamble of the Act reiterated the broad features of the statement of objects and reasons accompanying the Ordinance, namely that the Act was for the regulation of the employment of private security guards employed in factories and establishments, for providing better terms and conditions of employment and welfare and for establishment of a Board and matters connected therewith.

15. The learned Judge thereafter referred to **various sections of the Act**. It was noted that in view of section 1(4), the Act applied only to security guards engaged through agents or agencies. After referring to the definitions of "employer" and "security guards", the learned Judge noted that the Act did not apply to security guards directly employed by the principal employer. Thereafter it was noted that under section 3 of the Act, power was given to the Government to make a Scheme governing various aspects which are mentioned under clauses (a) to (n) of sub-section 2 of that Section. Section 6 was referred which empowered the State Government to constitute a Board for the security guards in any area and to establish such Boards for one or more classes of security guards in different areas. On page 633 of the law report, it is seen that the learned Judge referred to sections 19, 20 and 21 of the Act as they stood at that time and which imposed certain responsibilities on the principal employers under the Workmen’s Compensation Act, Payment of Wages Act and Maternity Benefit Act. Thereafter it was noted that section 22 protected those service conditions which were more favourable and which existed earlier in any factory or establishment. Thereafter section 23 was referred which provided for exemption to the guards where the benefits made available to the security guards were not

less favourable.

16. The learned Judge thereafter referred to **various provisions of the Scheme** and particularly clause 27 thereof prohibiting registered employers from engaging a security guard other than a registered security guard or a directly employed security guard. After referring to various provisions of the Act and the Scheme as mentioned above, the learned Judge noted from pages 642 onwards that the Act and the Scheme together intended to regulate the employment of security guards working through the middleman operating as agents or agencies. He observed, as recorded at the end of page 643, that the direct consequence of this legislation is the elimination of the middlemen from the activity of supplying security guards and that this activity will hereafter be done by the Board.

17. (i) As pointed out earlier, the learned Judge then referred to the ten contentions raised on behalf of the Petitioners and discussed them. While doing that, he did note at page 648 of the law report that the security guards engaged by some of the agencies were entitled to the protection of labour laws. It was, in this context, that he mentioned that section 23 of the Act gives power to the State Government to grant exemption from all or any of the provisions of the Act

to such security guards as are in the enjoyment of benefits which are on the whole not less favourable.

18. He, however, came to the conclusion that the provision under section 3(4) was not called for at all. It is a sub-section which provides that once the Act or a Scheme comes into force, merely on that count no principal employer or agency will discharge the security guards. The learned Judge felt that the provision was unnecessary and meaningless.

19. As far as the provisions under **sections 19, 20 and 21 of the Act** are concerned, similar welfare provisions are found in other Acts like Dock Workers (Regulation of Employment Act, 1948 and the Mathadi Act. The learned Judge noted the argument that for the purposes of these three Acts, viz. Workmen's Compensation Act, Payment of Wages Act and the Maternity Benefit Act, the principal employer will be considered as the employer of the security guards. As far as section 22 is concerned, the learned Judge took the view that it was in the nature of a transitory provision than a permanent one. It is a section which provides that where the security guards are already receiving better service conditions, those will continue.

20. Thereafter, on pages 657 and 658 of the law

report, while dealing with **section 23 granting exemption,** the learned Judge expressed that in the absence of a corresponding provision extending the exemption to the agencies and the employer, the provision of exemption to the security guards was meaningless and otiose. He noted that the security guards were themselves not the employees of any factory or establishment. They were the employees of agencies. He thereafter observed that the section therefore will have to be construed to mean that where the Government decides to grant exemption, it will grant exemption not only to the security guards but also to the agencies and the factories or establishments to which they are supplying the security guards. It is material to note that the learned Judge, however, also held that the exemption can be availed of only at the initial stage and cannot be applied for once the Act became applicable to the factory or establishment.

21. Thereafter the learned Judge dealt with the **objections of the agencies**, namely that unequals were treated as equals and that fundamental rights of the agencies under Article 19(1)(g) were violated. He referred to various judgements in that behalf and particularly the one in the case of **M/s Gammon India Ltd. v. Union of India - AIR 1974 SC 960** concerning the Contract Labour (Regulation and Abolition) Act,

1970. With respect to the objection that the agencies will now become jobless, the learned Judge noted that the prohibition applied only to the area of Greater Bombay and Thane Districts and the agencies have all the liberty to operate in the other districts of the State. There was nothing wrong in the restriction since in his view, the only role which the agencies did play was that of middlemen rendering services of security guards on a certain remuneration and that it was nothing short of trafficking in human labour. Later, the learned Judge also noted that the security guards to whom the present legislation related were covered by the Contract Labour (Regulation and Abolition) Act. Under that Act, employment of security guards on contract labour system can be prohibited by issuing a notification under section 10 of the Act. In fact, such a notification had been issued earlier by the State Government, but was invalidated by the High Court on the ground that it was not a speaking order. It is on this background that the present Act had been enacted.

22. On page 698, the learned Judge however noted that the Act and the Scheme took care of all matters which can properly arise out of the employment of security guards. They provide for the rights and obligations arising out of such employment as well as for remedies and the fora to enforce them. The learned

Judge observed -

> "No rights and obligations other than these provided for therein can be insisted upon nor remedies or forums not mentioned therein can be availed of. The legislation is a complete code by itself and it is not open for the parties to look for any other rights and obligations, remedies and forums."

23. Thereafter the learned Judge has posed a question to himself that assuming that there are some service conditions which are not provided under the Act, is there no employer against whom the security guard can proceed? He has therefore discussed various judgments and at the end of page 709 has come to the conclusion that in the first instance, there is no need to identify an employer in the present case. Assuming however that there is any such a need, for purposes not provided for under the legislation, the employer will be a principal employer as defined in the Act. Before coming to this conclusion, he noted that merely because it is not his hand which recruits or punishes the guard, the principal employer does not cease to be the employer of the guard. On the basis of the test laid down by the Supreme Court, the learned Judge has held that the registered employer

or the principal employer, as defined under the Act, is the employer of the guards for the purposes not covered by the Act or the Scheme. He then observed that the provision of sections 19, 20 and 21 are not to be construed negatively to mean that except for those acts, either the "employer" or "principal employer" are not the masters of the security guards.

24. At page 724, we find that the learned Judge has negatived the argument of the counsel for some of the Petitioners that the Act intended to preserve the agencies. For that purpose, he referred to the provisions of the Act and the Scheme and that the Scheme prepared by the Government may provide for prohibition of the employment.

25. In this background, the learned Judge finally came to the **three conclusions** (as seen on page 725 of the law report):-

(i) Provision of section 3(4) of the Act, insofar as it penalises the action by the principal employer or the agency in the event of his / its dismissing / terminating the appointment of the security guard prior to the coming into force of the Scheme, was struck down.

(ii) The learned Judge declared that section 23 is to be read to extend the exemption to the security guards and is available to the agencies and the principal employers with whom they are and will be empowered.

(iii) The rest of the provisions of the Act and the Scheme were upheld as valid.

26. A Special Leave Petition was preferred against this judgment which came to be dismissed by the Apex Court on 5th January 1983. The Apex Court, however, noted in the order of dismissal that some of the Petitioners had applied to the State Government to accord exemption from the operation of the Scheme and those applications were under consideration of State Government. The Court directed that the Scheme will not be enforced against those Petitioners till the end of January 1983 and that the Government should dispose of those applications by that date. This order appears to have been modified and the later portion was deleted. (This is seen from para 1 of the subsequent judgment reported in AIR 1987 SC 1370 - Security Guards Board v. Security & Personnel Services Pvt. Ltd.)

27. It appears that the State Government did not

grant the exemptions which were sought. Initially, the Advisory Committee had recommended grant of exemption to 21 agencies. Four other agencies, which were not recommended, were again investigated by the Labour Commissioner who recommended exemption in their favour also. The State Government, however, rejected all these applications for exemption on 28th June 1984. Writ petitions were filed to challenge this decision. Petitions of 25 agencies, which were recommended either by the Advisory Committee or the Labour Commissioner, were admitted and the rest were dismissed. These 25 petitions were subsequently dismissed by a Single Judge on 11th June 1985. Appeal was preferred to a Division Bench which directed the State Government to consider the applications on merit. (This is recorded in para 2 of the judgment of the Apex Court in AIR 1987 SC 1370). The Security Guard Board challenged this decision to the Apex Court. The Apex Court allowed that appeal by holding that in fact the State Government had considered the applications on merit and that they were not rejected as a matter of policy. The Court drew that inference from the affidavit of one Shri Rajadhyaksha filed on behalf of the State Government. (It is seen in para 9 of the judgment in AIR 1987 SC 1370).

28. It is however material to note as to what was

canvassed before the Apex Court in this matter and the observations made by it. As can be seen from para 4 of the judgment, it was argued by the counsel for the Security Guards Board that section 23 did not contemplate grant of exemption in favour of the agencies, whereas it was argued by the counsel on behalf of the agencies that the Act did not contemplate abolition of the agencies and that it was meant to regulate and provide better conditions of service to the security guards. In para 5 and 6 of the judgment, the Apex Court referred to the preamble of the Act, the definitions of agency, employer, establishment, principal employer and security guards and also the provision of section 3 which deals with framing of the Scheme. The Court noted that sections 19, 20 and 21 provide for the application of Workmen's Compensation Act, Payment of Wages Act, and Maternity Benefit Act to security guards. The Court further noted that section 23 provided for the preservation of existing rights and privileges if they were more favourable. In para 6, the Apex Court particularly referred to para 14, 15 and 27 of the Scheme. Para 14 of the Scheme required any employer engaging private security guards to get himself registered with the Board and para 15 required every security guard working on the appointed day in the particular employment in the area to apply to the Board for registration. It particularly noted that

para 27 prohibited the employment of a security guard by a registered employer unless the security guard is a registered security guard or a directly employed security guard.

29. What is observed by the Court in para 7 is most important for our purpose. In para 7, the Court has begun by referring to section 1(4) of the Act and has observed that it was obvious from section 1(4) and the very definition of "security guard" that the Act and therefore the Scheme were not applicable to the persons who were direct and regular employees of a factory or an establishment but were applicable only to persons working in any factory or establishment through an agency or agent. The Court, therefore, noted that section 23 provided for exemption from the operation of all or any of the provisions of the Act or any Scheme where the security guards were in receipt of better service conditions. Thereafter the Court observed as follows:-

> "The basic condition to be satisfied is that the State Government should be of the opinion that all such security guards or such class or classes of security guards are in the enjoyment of benefit which are on the whole not less favourable to such security guards

> than the benefits provided by or under this Act or any Scheme made thereunder."

The Court then observed -

> "A close scrutiny of S.23, particularly in the light of S.1(4) read with the definition of "Security Guard", makes it clear that the exemption is not in respect of an agency or an agent or even a factory or establishment but in respect of all or any class or classes of Security Guards employed in any factory or establishment or in any class or classes of factories or establishments."

Thus, the Court noted that there was a room for exemption of the security guards if they were in receipt of benefits which were not less favourable. The co-relationship of the security guards, who may be exempted from the operation of the Act, was to the factory or establishment or class or classes of factories or establishments in which they worked and not with the agency or agent through whom they were employed. Obviously, the security guards employed in a factory or an establishment could apply to the Government to exempt them from the Act. Then the Court observed that though the agencies do not enter into the

picture since the definition of the security guards mean persons engaged or to be engaged through an agency or agent, such agency or agent may also apply to the Government to exempt security guards engaged or to be engaged in a factory or an establishment. Thus the Apex Court has made it clear that firstly there is a scope for exemption and secondly the exemption is available only for the security guards, but the agencies may apply on their behalf. It is another matter that in the facts of that case, the Court did hold that on merits the applications of the agencies were considered and rightly rejected.

30. We have analysed the above two judgments principally to examine the submission of Mr.Singhavi, learned Counsel for the petitioners that prior to the passing of the impugned amended Act, there was no scope for the security agencies to provide the security guards. The offshoot of the analysis of these two judgments will, however, lead us to the conclusion that it will not be correct to hold that at the end of the decision of the Apex Court, the view taken by the learned Single Judge was left entirely undisturbed. As stated above, a role for the working of the agencies has been accepted by the Apex Court. It is true that with respect to the observations of the learned Single Judge that the agencies may now operate only at the

initial stage, the Apex Court has not commented one way or the other. We must however note that the Court was concerned with the rejection of the applications of 25 agencies. The Apex Court has upheld the rejection as one on merits of those applications, yet the Court has made it clear that on merits such applications can either be entertained or be rejected provided of course the security guards are under receipt of benefits which are not less favourable. The Court has also clarified that though the exemption is for the security guards, it is permissible for the agencies to apply on their behalf. In view of this position, the extreme proposition sought to be canvassed on the basis of the judgment of the learned Single Judge that there was no scope for the agencies under the Act and the Scheme (as it stood), does not hold good. When we read the judgment of the Apex Court, it has in terms noted that under the Scheme there is a provision prohibiting employment of security guards under para 14, 15 and 27 thereof. At the same time, the Court has also noted that there is equally the provision for exemption available under section 23 of the Act.

31. The submissions of the Singhavi were adopted by Mr.Pakale, learned Counsel appearing for the petitioner-Union in Writ Petition No.5321 of 1999, namely, that the Amending Act was a retrograde step.

The third Writ Petition bearing No.5040 of 2000 also contains the same submissions, though nobody appeared for the petitioners. Mr.Mahadeshwar appearing for the another Trade Union supported these submissions while submitting at the same time that there was no change in the law effected by the amendment. Mrs.Lata Desai, learned Counsel appearing for the security guards' Board, submitted that the purpose of passing of the Act was to eliminate the middle men. The basis of these submissions has been the judgment of the learned Single Judge which has been discussed above. As noted by us, the view taken by the learned Single Judge on the role of the agencies has not been left undisturbed by the Apex Court and, therefore, these submissions are not tenable.

32. On behalf of the State Government, it was submitted by Mr.Kumbhakoni, learned Associate Advocate General, that the Apex Court did accept that there was a provision for the agencies giving better service conditions to seek exemptions under Section 23 of the said Act. It is also clear from the Apex Court judgment that though the exemption was meant for the Security Guards, it was permissible for the agencies engaging them to apply for the exemption. There is one more development which we must note, namely, that after passing of this amendment scheme under the amended Act

was also framed in 2002. The provisions of this amended scheme also came to be challenged by the petitioners in Writ Petition No.5046 of 2000 by filing Writ Petition No.1085 of 2003. That Petition came to be dismissed by a Division Bench judgment rendered on 23rd June 2003. It is, therefore, submitted on behalf of the State Government that it is too late in the day now to challenge the vires of the said Act.

33. Once it is held that the agency had a place, the inter-relationship between the guards, agencies and the principal employers had to be clarified. Mr.Kumbhakoni, learned Additional Advocate General, therefore, emphasized that the Statement of objects and reasons specifically stated that there were ambiguities in the legislation which had to be removed. He submitted that in a way what was implicit in the legislation has been only made explicit. By doing that no departure has been made from the objectives of the unamended Act. He very fairly stated that it is possible that the provision of exemption could be misused but that was even under the unamended Act, (though as interpreted by the learned Single Judge there was no scope for any exemption once the Act became operational). However, as noted by us, the Apex Court did recognize the scope for better service conditions and, therefore, there was a room for getting

exemption under Section 23 of the Act. These aspects of the relationship, namely, that the Security Guards employed by the agencies are in the employment of the agencies and that they are deployed by the agencies under the factory or establishment of the principal employer are made clear in the definition of employer as defined after the amendment. Similarly the definition of principal employer earlier stated that he was an employer who engaged the Security Guards through the agency. Now it is clarified that he is one in whose factory or establishment the Security Guards are deployed by the agency or by the board and that he is one who is having ultimate control over the factory or establishment. An agency was defined earlier to mean an individual or a body which engages Security Guards on hire or otherwise or supplies the Security Guards to a factory or establishment. The definition of an agency after the amendment by and large maintains the same texture though the text is altered to make it explicit. Prior to the amendment, Section 23 had the same thread, namely, that while granting exemption the appropriate Government must satisfy itself that the Security Guards are in the enjoyment of benefits which are on the whole not less favourable than those provided by under the Act or under the Scheme. That provision is continued under the amended section, though it is clarified that the Security Guards are

those who are employed by the agency and are deployed in any such factory or establishment.

34. It is true that under the unamended Act the first proviso to Section 23 provided that before any notification of exemption is issued, the State Government shall invite objections and suggestions in respect thereof and they are to be considered before a decision is arrived at. This proviso has been deleted after the amendment. However, the principal provision of the section earlier provided that the exemption is to be granted after consulting the Advisory Committee. That provision is maintained even in the amended section. Mr.Kumbhakoni defended the amendment by submitting that in the Advisory Committee, there were equal representatives of employers and the Security Guards. They would certainly take care of the interest of the Security Guards and examine whether they are in the receipt of the benefits which are on the whole not less favourable by not inviting to the objections and suggestions only the duplication of the work is avoided.

35. According to Mr.Kumbhakoni, the criticism of the amendment of Sections 19, 20 and 21 is similarly unwarranted. These sections cast the responsibility on the principal employer when it comes to the liabilities

under the Workmen's Compensation Act, Payment of Wages Act and the Maternity Benefits Act. The amending Act has used the term "principal employer" in the later part of all these sections where earlier the term "employer" was used. Thus, it is clarified that for the purposes of these Act where the Security Guards are engaged through the Board, the Board will be liable whereas where they are engaged through the agencies, the principal employers of the factories or establishments engaging them will be liable. These Acts are welfare Acts. The amendments do not mean that the responsibility of the agencies is over. The amendment will have to be construed as aforesaid to enforce the welfare provisions. They are provisions made by way of abundant caution so that in cases of workmen's compensation, or non-payment of wages or non-grant of maternity benefits, the principal employer shall be liable.

36. The submissions of Mr.Kumbhakoni were supported by Mr.C.U.Singh, learned Counsel appearing for some of the contractors. He submitted that this amendment is essentially a clarificatory one. It seeks to clarify that when it comes to security guards engaged through the contracting agencies, they are employed by those agencies but are deployed under the principal employers who run the factories or the

establishments. Mr.Rele, learned Counsel appearing for some of the principal employers supported these submissions by submitting that it was not correct to contend that the unamended Act totally prohibited the agencies, otherwise there was no explanation for having Section 23 under the Act which granted exemption to agencies providing better service conditions.

37. We have noted the objections to the amendments and the explanation given the State. The principal grievance with respect to the amending Act has been that according to the petitioners it permits the Security Agencies to provide the Security Guards and that it was not permissible prior to the amendment. As pointed out above, it is undoubtedly true that the learned Single Judge did take the view that the Security Agencies could exist only when the Act came into force and after it is coming into force they had no place. He did take the view that after the Act coming into force, there will be only direct employees of the principal employer or there will be Security Guards provided by the Board. This interpretation of the learned Single Judge does not appear to have been approved by the Apex Court in the Security Guards Board’s case (supra) though the judgment as such was not interfered. The Apex Court had in terms held that for those Security Guards who were in the receipt of

the better service conditions on an overall basis it was permissible for the guards to seek exemption and it was also permissible for the Agencies to apply on their behalf. It obviously meant that the Agencies had a place under the Act.

38. As noted above, the intention in bringing about the amending Act was to remove the ambiguities. That is stated in the Statement of objects and reasons of the amending Act. Now the question is does the amending Act bring about a departure from the original Act which can be called to be a substantial one and can it be said that thereby any element of unreasonableness or unequal treatment is introduced between those who are similarly situated so as to invoke Article 14 of the Constitution of India. As seen earlier, the concept of agency, employer, principal employer and the security guard were already there under the unamended Act. The agencies which were held to have a place under the judgment of the Apex Court, had the role to engage the Security Guards for the principal employer and in fact the definition of employer as against the principal employer required a clarification. This is clear from the problem which the learned Single Judge faced when it came to the question as to who was the employer of the Security Guards. He posed the question to himself that assuming that there are some service

conditions which are not provided under the Act, is there no employer against whom the Security Guards can proceed. At the end of page 709 of the above Report, he held that in the instant case there was no need to identify an employer, but if one was required, the employer will be the principal employer. This will be so, held the Judge even if he did not either recruit or punish the Security Guards. This position created an incongruous situation which is now resolved by the amendment.

39. As stated earlier, the objections arose from the impression of the petitioners that the agencies had no place prior to these amendments. That view taken by the learned Single Judge is not maintained by the Apex Court as noted above. Once it was held that the agencies had a place, the unamended Act required clarification. The relationship between the agencies and the principal employers had to be made explicit. It is for this purpose that the amendments have been introduced to the definitions of agencies, principal employers and employers and security guards or private security guards. The amendment to Section 23 is also on the same line, though now the duplication of the scrutiny prior to the exemption is removed. The amendments to Sections 19, 20 and 21 are also essentially for the protection of the security guards

engaged for the principal employers and the burden under the welfare enactments is placed on them.

40. It is, therefore, not possible to say that anything unreasonable has been brought about by the amendment or that any unequal or dissimilar classes of any sort are to be treated similarly or similar classes are to be treated dissimilarly to attract Article 14 of the Constitution of India. There are different classes of Security Guards contemplated under the Act. Those who are directly and regularly employed by the factory or establishment, those who are engaged at the factory or establishment through the Board and those who are employed through the Security Agencies, but deployed at the factory and/or establishment. Their status is different and the relationship with their employers is on a different footing. Whereas the directly employed Security Guard will get his wages and service benefits from the employer of the factory or the establishment, the one who is engaged through the Board, will get them from the Board. The recruitment and the Disciplinary Authority in their case will be the employer of the factory or establishment or the Board, as the case may. It is now clarified that as far as the Security Guards engaged through the Security Agencies are concerned, they will be treated as employees of the Security Agencies for all purposes. Their wages and the service

conditions will depend upon their contract with the Security Agencies. Although all the three categories of employees work as Security Guards they work under different employers Therefore, all of them cannot be treated similarly. The amending Act clarifies this position. It cannot be said that it is in any way unreasonable or violative of Article 14 of the Constitution.

41. A reference is made to Article 21 and some of the directive principles, no serious argument has been advanced in that behalf. We do not find the amendment to be bad on that count either. Similarly as stated earlier, though the allegation is that the amendment is retrograde one, it presumes that something which is now being done, was not available prior to the amendment. As stated above, that is not the position. That apart, one cannot attribute mala fides to a legislation or to a legislature. A law enacted by the legislature cannot be questioned on the ground of propriety. The only grounds on which the validity of a law can be examined are either the breach of fundamental rights with which we have dealt with above or the lack of legislative competence. In view of what is stated above, there is no substance in the first grievance of the petitioners and the same is rejected.

42. The second submission of the petitioners is that the amending Act is repugnant to the provisions of Contract Labour (Regulation and Abolition) Act, 1970, it has not been reserved for the assent of the President and, therefore, the same may be declared unconstitutional on the touch-stone of Article 254(2) of the Constitution of India. To examine this submission, we may refer to Article 254 which reads as follows:-

> " **254. Inconsistency between laws made by Parliament and laws made by the Legislature of States.-** (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of resident and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State. "

43. As noted earlier, the amending Act has amended the definitions of agency or agent, employers, municipal employer and those of security guards or private security guards. It has also made some appropriate changes in Section 23 on exemptions and cast the responsibilities on the principal employer under Sections 19, 20 and 21 of the Act. The unamended Act was reserved for the assent of the President and,

therefore, it prevails in the State of Maharashtra with respect to the private security guards and not the Contract Labour (Regulation and Abolition) Act, 1970. This will be so to the extent it contains provisions repugnant to the Central Act. Now, the question is as to whether the amendment has done any such thing which requires the assent of the President once again.

44. To begin with, we may, however, refer to some of the judgments relied upon by Mr.Sanjay Singhavi, learned Counsel appearing for the petitioner on the question of repugnancy. Thus, he has relied upon a judgment in the case of **Ch. Tika Ramji & ors. etc. vs. The State of Uttar Pradesh & ors. reported in 1956 SC 676** where the principle of repugnancy has been explained. The extract from Ex-parte Mc Lean, (1930) 43 CLR 472 quoted in paragraph 30 of this judgment is quite instructive which is to the following effect:-

> " .....If it appeared that the Federal law was intended to be supplementary to or cumulative upon State law, then no inconsistency would be exhibited in imposing the same duties or in inflicting different penalties.
>
> The inconsistency does not lie in the mere co-existence of two laws which are susceptible

> of simultaneous obedience. It depends upon the intention of the paramount Legislature to express by its enactment, completely, exhaustively, what shall be the law governing the particular conduct or matter to which its attention is directed. When a Federal statute discloses such an intention, it is inconsistent with it for the law of a State to govern the same conduct or matter."

45. The other test emphasized by Mr.Singhvi is what is laid down in **State of Orissa vs. M.A. Tulloch & Co. reported in 1963 (4) S.C.R. page 461**. At page 477 of this judgment, the Apex Court observed as follows:-

> " ..... But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be

overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation."

46. The law on this aspect was once again clarified in **Deep Chand vs. State of Uttar Pradesh reported in 1959 Supp (2) SCR 8 : (AIR 1959 SC 648)** which is quoted in para-24 of **T.K.V.T.S.S. Medical Educational & Charitable Trust vs. State of T.N. reported in AIR 1966 SC 2384** as follows:-

" 24. In Deep Chand v. State of Uttar Pradesh 1959 Supp (2) SCR 8 : (AIR 1959 SC 648), this Court, while dealing with Article 254 of the Constitution, has held :

" Repugnancy between two statutes may thus be ascertained on the basis of the following three principles :

(1) Whether there is direct conflict between the two provisions;

(2) Whether Parliament intended to lay down an exhaustive code in respect of the

subject-matter replacing the Act of the State Legislature; and

(3) Whether the law made by Parliament and the law made by the State Legislature occupy the same filed."

47. Last but not the least Mr.Singhvi submitted that the pith and substance of the two legislations must be seen. In this behalf, he relies upon **Vijay Kumar Sharma vs. State of Karnataka reported in AIR 1990 SC 2072**. In para-45 thereof, the Court emphasized the operational incompatibility and the test of inconsistency. We may as well refer to Mr.Singhvi's reference to the judgment in the case of **Gram Panchayat of Village Jamalpur vs. Malwinder Singh & ors. reported in AIR 1985 SC 1394** where in para-12 the Court noted as follows:-

" .... The President has, at least, to be apprised of the reason why his assent is sought if, there is any special reason for doing so. .... "

However, that will be so where the assent is necessary.

48. The petitioners contend that by creating a

space for the agencies the State Act is entering into an area of the Central Legislation. As noted earlier, the premise of this submission itself is erroneous since agencies were having a place under the unamended Act as held by the Apex Court. The Central Act provides for abolition of contract system in certain circumstances. However, in cases other than those covered under Section 10 of that Act the agencies engaging contract labour are permitted to operate and the conditions of service of such labour are regulated under the Act. The State Act is a special legislation for the private security guards. Under the scheme of the Act, they have to be registered with the security guards' board and the board has to supply them the principal employers. It is only where the service conditions offered to them are better that the guards can be given exemption under Section 23 of the Act. This mechanism under the State Act had received the assent of the President. The amending provisions are only clarificatory, as held by us above. It cannot be said that the amending Act has brought about any sea-change in the position.

49.(i) It is then contended that the Central Act provides for Central Advisory Board and the State Advisory Board, whereas under the State Act there is an Advisory Committee and there will be a conflict between

the two. Here also it is to be noted that the Advisory Committee existed under the unamended Act. It is constituted under Section 15 thereof which has remained as it is except that under the proviso to Section 15(2), the word "employer" is replaced by the words "principal employer". Thus, there will be equal representative on the Advisory Committee of the security guards, principal employers, the State Legislature and the Government. When it comes to granting exemption under Section 23, the Advisory Committee had to be consulted earlier and now also that provision is retained. The Advisory Committee is created in spite of there being Central and State Advisory Boards under the Central Act. When the unamended Act received assent, this part is already taken care of

(ii). Similarly the amendments to the welfare provisions under Sections 19, 20 and 21 of the Act now provide that as far as the Workmen’s Compensation Act, Payment of Wages Act and Maternity Benefit Act are concerned, for the private security guards engaged through the contractors the principal employer will be treated as their employer. This amendment is only by way of clarification and abundant caution.

50. For establishing repugnancy the petitioners

will have to establish as observed in **Para-24 of M. Karunanidhi vs. Union of India reported in (1979) SCC 431** :-

> (a) That there is a clear and direct inconsistency between the Central Act and the State Act.
>
> (b) That such an inconsistency is irreconcilable;
>
> (c) That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

For establishing such a position, the repugnancy must exist in fact. If the two Acts are occupying the same field, it is all the more necessary to establish the conflict. In the present case, the petitioners have failed to establish the same.

51. The dicta which holds the field is what is stated in para-35 in the case of M. Karunanidhi (supra) to the following effect:-

"1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statues occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field. "

Having noted the submissions and the legal position as

stated by us earlier, the petitioners have failed to demonstrate clear and direct inconsistency which has come about after the amendment. They have failed to point out that there is any specific collision between the amended Act and the Central Act. They have failed in establishing that the amended Act cannot operate in its area of operation without colliding with the Central Act. It is, therefore, not possible to say that there is any repugnancy in the amended Act on the touch-stone of Article 254(2) of the Constitution.

52. Before we conclude, we may observe that much of the problem has come about because of the petitioners not appreciating the effect of the judgment of the Apex Court in the case of Security Guards Board (supra) subsequent to the one of the learned Single Judge of this Court in M/s.Tradesvel Security Services Pvt.Ltd. (supra) and continuing to emphasize the dicta of the learned Single Judge. We must note in this behalf that one cannot ignore the caution expressed by the Apex Court in **Union of India vs. Major Bhadur Singh reported in (2006) 1 SCC 368** to the effect that judges interpret words of statutes, their words are not to be interpreted as statutes.

53. For the reasons stated above, all the above Petitions stand dismissed. No order as to costs.

(H.L. GOKHALE, J.)

(J.H. BHATIA, J.)